COURT OF APPEALS
DECISION
DATED AND RELEASED

June 21, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3358-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

In re the Marriage of:

CHARLENE S. MATHEWSON,

Petitioner-Respondent,

v.

PAUL H. MATHEWSON,

Respondent-Appellant.

APPEAL from an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed*.

Before Anderson, P.J., Nettesheim and Snyder, JJ.

PER CURIAM. Paul H. Mathewson appeals from an order requiring him to pay $320.44 per month for the support of his ten-year-old daughter. Pursuant to a presubmission conference and this court's order of January 20, 1995, the parties have submitted memorandum briefs. Upon review of those memoranda and the record, we affirm the trial court's order.

Paul and the respondent, Charlene Mathewson, were divorced in 1991. Their judgment of divorce incorporated a marital settlement agreement which required Paul to begin paying child support of $150 per month after Charlene paid him $28,000 from the sale proceeds of the marital home. The parties stipulated that "[t]he level of child support is less than the amount that would be determined based upon a percentage of [Paul's] gross income and represents a compromise in conjunction with additional promises contained herein regarding property division and maintenance." The agreement also prohibited modification of child support unless there was a substantial change in the relative circumstances of the parties as of the time of the final hearing regarding the divorce.

In July 1993, the trial court, the Honorable John R. Race presiding, found that a substantial change in circumstances had occurred and increased child support to $320.44 per month. In doing so, it rejected as contrary to public policy Paul's argument that applying the percentage guidelines would be unfair to him because the parties had agreed to child support at a level below that required by the guidelines.

This court reversed the trial court's order, holding that the trial court should have considered the compromises which were within the contemplation of the parties and the trial court at the time Paul's child support was originally determined, and considered whether modifying child support would be fair to Paul. ***Mathewson v. Mathewson***, No. 93-2617-FT, unpublished slip op. at 4-5 (Wis. Ct. App. Mar. 16, 1994). We remanded the matter to the trial court to consider those factors which influenced the parties' original child support agreement and whether increasing support would be fair to Paul. ***Id.*** at 5.

On remand, the trial court, the Honorable James L. Carlson presiding, heard testimony from Paul and Charlene concerning the factors that influenced their entry into the child support agreement. Paul testified that the motivation behind the compromise was his waiver of any claim to maintenance and his agreement to include property inherited by him during the marriage in the marital estate. Charlene's testimony indicated that these were factors, but

that the primary reason she agreed to the reduced support was that based on her financial circumstances at the time of the divorce, she did not need the full amount that would have been awarded under the percentage guidelines. She indicated that she also relied on the inclusion of the provision for modification of support if there was a substantial change in circumstances.

Based on the testimony and exhibits, the trial court found that the waiver of any maintenance claim and the inclusion of inherited property in the marital estate were not the only factors upon which the marital agreement was predicated. It found credible Charlene's testimony that she agreed to limited support primarily because it was sufficient to meet her needs at the time, a fact which the trial court indicated was borne out by the financial disclosure statement submitted by Charlene at the time of the divorce showing a budget shortfall before support of only $136 per month.

The trial court therefore properly addressed the portion of this court's remand order which required it to consider the factors which influenced the parties' agreement. In addition, as required by the remand order, it expressly considered whether modifying support would be fair to Paul. In determining that modification would be fair, the trial court noted that Charlene's needs had increased because she lost her job in Whitewater. It found that, after an honest effort, she found a new job consistent with her abilities in Oshkosh, but at lower pay and with increased expenses. Based on her new income and expenses, it found that she had a budget shortfall, which previously was determined by Judge Race to be $546 per month.[1] It also found that Paul had the ability to pay increased support and that it therefore would not be unfair to require him to pay it.[2]

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[1] Based on its own calculations using the financial information previously presented to Judge Race, the trial court determined that Charlene's budget shortfall was $7415 per year, an even greater amount than that found by Judge Race.

[2] Paul criticizes Charlene's budget on the ground that after selling the marital home in

Paul argues that the only factors which should have been considered as influencing the parties' agreement were maintenance and the property division since those were the only considerations expressed in the agreement. However, this ignores the provision in the agreement indicating that support could be modified if a substantial change in circumstances occurred. By agreeing to this provision, Paul recognized that a modification of support might occur in the future if the parties' financial circumstances changed. Since the evidence regarding Charlene's increased needs also supports a determination that a substantial change of circumstances occurred, we find no basis for disturbing the trial court's conclusion that modification of support would be fair to Paul.[3] The trial court therefore properly applied the percentage standards to determine support. *See* § 767.32(2), STATS.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

(..continued)
Whitewater, she bought a new home in Oshkosh which cost $10,000 more and is paying for it under a fifteen-year mortgage plan. He also objects that her budget includes $250 in monthly contributions to a 401K plan. However, as noted by Judge Race, regardless of how the 401K contribution is viewed, Charlene clearly had an increase in housing expenses and a decrease in income since the time of the divorce. Even if the $250 contribution is excluded from her expenses, the percentage standard award of approximately $300 per month is necessary to meet her budget shortfall. In addition, the fact that her housing expenses in Oshkosh exceeded those in Whitewater, without more, does not establish that her expenses are unreasonable.

[3] Paul also objects to the trial court's discussion of the effect the maintenance and inheritance issues would have had at the time of the parties' divorce, absent the marital settlement agreement. However, regardless of the merits of the trial court's analysis of these issues, it also expressly found that the primary factor underlying the agreement was that child support of $150 per month was sufficient at the time of the divorce, and that the fundamental understandings of the parties as to their respective financial positions were upturned after the agreement was entered. Based on the evidence in the record, these findings are not clearly erroneous. They therefore will not be disturbed by this court. *See* § 805.17(2), STATS.